

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

DEDRIC CUMMINGS,  
(TDCJ-CID #1481930)  
Petitioner,

vs.

RICK THALER,

Respondent.

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CIVIL ACTION H-10-4027

**MEMORANDUM AND OPINION**

The petitioner has failed to submit an application to proceed as a pauper or to pay a fee of \$5.00, as required by the Clerk's Notice of Deficient Pleading dated November 1, 2010. The notice specifically provided that failure to comply as directed may result in the dismissal of this action. (Docket Entry No. 3). The petitioner's failure to file an application to proceed *in forma pauperis* or pay the filing fee forces this court to conclude that he lacks due diligence. Dismissal for want of prosecution is appropriate. *See* FED. R. CIV. P. 41(b); *Link v. Wabash R.R.*, 370 U.S. 626 (1962); *Woodson v. Surgitek, Inc.*, 57 F.3d 1406, 1417 (5th Cir. 1995); 8 J. MOORE, ET AL., MOORE'S FEDERAL PRACTICE § 41.51(3)(b) & (c) (3d ed. 2010). On a proper showing, relief from this order may be granted under FED. R. CIV. P. 60(b). *See Link*, 370 U.S. at 635.

This action is dismissed without prejudice for want of prosecution.

SIGNED on December 6, 2010, at Houston, Texas.

  
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Lee H. Rosenthal  
United States District Judge